

Application No. 10/634,651

Remarks

Claims 1-4, 6-7, 9, 13-18, 21-24, 26 and 40-43 are pending. Claims 1-4, and 44-53 were withdrawn from consideration. Claims 5, 8, 10-12, 19-20, 25, and 27-39 were previously cancelled without prejudice or disclaimer.

Claim 40 has been amended in view of the official action and to more particularly claim what Applicant believes is his invention. In particular, Claim 40 has been amended to claim an anode for an electrochemical cell comprising a battery grade zinc powder comprising intertwined zinc metal or zinc alloy particles. No new subject matter has been added by this amendment. Indeed, support for this amendment can be found at paragraph [0044].

REJECTION UNDER 35 U.S.C. § 103

Claims 9, 13-18 and 40-43 were rejected as being unpatentable over Durkot *et al.*. Applicant respectfully submits that Claim 40 as amended overcomes this objection in view of the following argument.

MPEP §2142 provides:

"To establish a *prima facie* case of obviousness, [...] the prior art reference (or references when combined) must teach or suggest all the claim limitations." [emphasis added]

Durkot *et al.* teaches an electrochemical cell with an anode comprising zinc alloy particles suspended in a fluid medium. The zinc alloy particles may have non-spherical shapes, such as flakes or acicular particles. Appropriate acicular shapes have a length L<sub>1</sub> along a major axis at least two times a length L<sub>2</sub> along a minor axis. Appropriate flake-form particles have an average thickness between their broad sides of no more than about 20% of

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the maximum linear dimension of the particles in order to have a very low volume to surface area ratio (see paragraphs [0018] and [0042]).

However, Durkot *et al.* fails to teach an anode for an electrochemical cell comprising a battery grade zinc powder comprising intertwined zinc metal or zinc alloy particles as is the case of the present invention as claimed in amended Claim 40. Durkot *et al.* is related primarily to the use of flakes which display physical characteristics considerably different from the relatively long fibrous strands of the present application. Indeed, it is clearly apparent that the flakes of Durkot *et al.* would not intertwine, as would neither the proposed acicular particles of Durkot *et al.* given their relatively short aspect ratio.

In view of the above, Applicant respectfully submits that the Examiner has failed to establish a *prima facie* case of obviousness. Indeed, Durkot *et al.*, and any of the other cited art, all fail to teach intertwining the zinc metal or zinc alloy particles as now claimed at amended Claim 40. The subject matter of Claim 40 as amended therefore involves an inventive step over the prior art and Claim 40 is not obvious. As a result, Claim 40 as amended is an allowable claim. As all the remaining objected claims depend from an allowable claim, Applicant submits that they, too, are allowable claims.

Accordingly, withdrawal of this rejection is respectfully requested.

Claims 6-7 were rejected as being unpatentable over Durkot *et al.* in view of Urry *et al.* (WO 98/50969). The Urry *et al.* reference does not obviate the above explained deficiencies of the Durkot *et al.* reference.

Accordingly, withdrawal of this rejection is respectfully requested.

Claims 21-24 and 26 were rejected as being unpatentable over Durkot *et al.* in view of Daniel-Ivad *et al.* (US 7,008,723). The Daniel-Ivad *et al.*

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reference does not obviate the above explained deficiencies of the Durkot et al. reference.

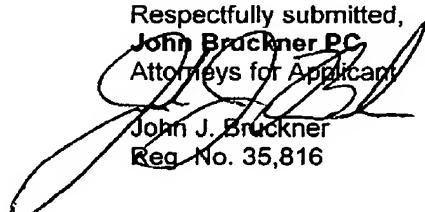
Accordingly, withdrawal of this rejection is respectfully requested.

The foregoing is believed to represent a full response to the Office Action. The application is believed to be in condition for allowance and early and favourable action would be appreciated.

The Examiner is invited to telephone the undersigned (at direct line 928-226-1073) for prompt action in the event issue(s) remain that prevent the allowance of all pending, non-withdrawn claims.

The Director of the U.S. Patent and Trademark Office is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 50-3204 of John Bruckner PC.

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